

IN THE HIGH COURT OF TANZANIA
(LABOUR COURT DIVISION)
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

LABOUR APPLICATION NO.1 OF 2021

ZAKAYO MALULU..... APPLICANT

VERSUS

PANGEA MINERALS.....RESPONDENT

RULING

29th July&24thSeptember,2021

MDEMU, J.:

This is a claim for breach under labour laws made under the provisions of Sections 94(1)(d) of the Employment and Labour Relations Act, No.6 of 2004 and Rule 6(1) of the Labour Court Rules, G.N. No.106 of 2007.The nature of the complaint is on:

- (a) Failure by the Respondent to pay per diems while on medical trips.*
- (b) Failure by the Respondent to pay transport costs, failure to reimburse transport costs while on medical trips.*

- (c) Failure by the Respondent to pay or reimburse medical expenses causing tortuous life to the complainant.*
- (d) Failure by the Respondent to assess and pay compensation for neck illness causing tortuous life to the complainant.*
- (e) Failure to pay compensation for back and disc problems causing tortuous life to the complainant.*
- (f) Breach of contractual and statutory duties.*
- (g) Breach of obligations causing both special and general damages to the complainant for about nine years now.*

In the course of filing pleadings, the Respondent raised the following preliminary objections:

- 1. To the extent that the complainant's cause of action is employment or labor matter falling under tortious liability in terms of section 88(1)(b)(ii) & (2) read together with section 94(1)(d) of the Employment and*

Labour Relations Act, Cap.366 RE 2019, this honorable court has no jurisdiction to determine this matter.

2. As the complainant's claims fall under the Workers' compensation Act, Cap.263, this honorable Court has no jurisdiction to determine this matter.

3. To the extent that the complainant cause of action is tort, in terms of the Law of Limitation Act, Cap.89, RE 2019, all claims up to March 3, 2018 are time barred.

4. The complainant suit is time barred.

These preliminary objections were heard by way of written submissions. The Applicant was represented by Mr. Charles Kiteja, Learned Advocate and the Respondent company was represented by Mr. Faustine Anton Malongo, Learned Advocate.

In his written submissions in support of the preliminary objections, Mr. Faustin Anton Malongo filed his written submissions on 8th of July, 2021. He abandoned the 1st and 2nd preliminary objections. Submitting on the remaining objections, Mr. Malongo stated that, in labour matters, there is time limit for lodging complaint which is 60 days from the date when the cause of action arose. He cited the case of **Barclays Bank Tanzania**

Limited v. Phylisia Hussein Mcheni, Civil Appeal No. 19 of 2016, at page 9 to support his point. Making reference to paragraph 7(x) of the complaint, Mr. Malongo thought the cause of action accrued between 19th April, 2017 and 13th December, 2018 when the Respondent refused to pay transport costs, per diem and medical expenses amounting to the tune of Tshs. 43,935,000. Therefore, sixty (60) days expired on 12th February, 2019.

Submitting on another cause of action under paragraph 7(xii) on compensation relating to neck and back problems; he thought the same accrued on 25th April, 2017 when the Respondent was ordered to make diagnosis and evaluation in respect of back and neck disability and compensate the Complainant on 4th May, 2017. In this therefore, sixty (60) days expired on 3rd July, 2017. As to the claim for general damages; his views was that the same expired on 12th February, 2019 and 3rd July, 2017 respectively.

He added that, the Complainant requested to the Respondent regarding payments for compensation and reimbursement lodged on 18/6/2020, 30/8/2020 and 30/9/2020 and that, such request letters did not revive the time which had expired long before the said request was made or letters were written. He added that, in the Law of Limitation Act, all suits

founded on tort are required to be filed within three years from the occurrence of the cause of action. He emphasized that, the first cause of action was supposed to be lodged within 60 days from 13th December, 2018 and the second from 4th May, 2017. However, the instant suit was lodged on 3rd March, 2021 which was well time barred. He cited the case of **Obetho Werema Joseph vs CATA Mining Ltd, Land Case No.20/2020** (unreported) at page 9 to support his position that, the court has no jurisdiction to determine suit filed out of time. He therefore prayed this complaint be dismissed for being time barred.

In reply, Mr. Charles Kiteja, Learned Advocate for the Complainant filed his written submissions on 9th of July, 2021 by submitting that, the Complaint is within time as it was lodged only after the lapse of 22 days when the cause of action arose from 10th February, 2021. He thus observed this preliminary objection not on pure points of law and does not meet the test of a preliminary objections. He cited the case of **Selcom Gaming Limited v. Gaming Management (T) Limited and Gaming Board of Tanzania, Civil Application No.175 of 2005** (unreported) to cement his point. He added that, the preliminary objection does not consist and/or raise pure point of law as well as the underlying objectives because it cannot be

disposed of without production of evidence, ascertainment of facts and hearing parties on merit.

Going to the substantive points, he submitted that, according to paragraph 7(xx) of the complaint, cause of action arose on the 10th February, 2021 when there was a last offer to pay the complainant in respect of CMA cases and after the dismissal of Labour Revision No.66/2018 which arose from Labour Dispute No. CMA/SHY/318/2016 and Labour Revision No.66/2018 which arose from Labour Dispute No.CMA/SHY/319/2018 when the Respondent failed to give final explanations on the payments and assessment procedure for compensation which was the agreement reached upon before the Labour Officer.

He emphasized that, the nature of this case is compensatory for occupational illness that arose in the course of employment. Thus, the complainant was entitled to other ancillary reliefs such as transport costs on medication and per diem according to Pangea Mineral Limited Policy, terms and procedure and the Workers Compensation Act, No.20/2008. He stated further that, the nature of claims cannot be covered under the Employment and Labour Relations Act because they do not fall within the CMA

jurisdiction. Therefore, the 30 and 60 days rule stipulated by Rule 10(1)(2) of the Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007 applies to CMA only and not the High Court (Labour Division).

He stated further that, the complaint lodged to this court is different from nature of claims that has to be referred to the CMA and therefore it is wrong to determine time limitation basing on the Employment and Labour Relations Act and the Rules thereto. In his view, claims of the nature complained herein are covered under the Workers Compensation Act as per section 3. In pursuing this, the Complainant referred his claims in 2017 before the Labour Officer of Kahama and later on to a Labour Officer of Shinyanga where the Respondent agreed and paid some of the verified receipts dated on 26/5/2017, 21/3/2017 and 07/02/2017 as pleaded under paragraph 7(viii) of the complaint.

As to the Respondent alleged some contradictory on receipts through letter dated the 13/6/2018 and on 27/8/2018; his view was that negotiations process continued whereby the labour officer of Kahama directed that whatever contradictions exist, the same be resolved by parties and the payments be affected immediately.

Responding on compensation for the occupational disease (neck and back), the Respondent in his letter dated 4th of May, 2017 promised to make assessment and pay the complainant herein and has never denied liability. It was on 19th December, 2018 the Respondent in her letter came up with another letter acknowledging a debt and agreed to pay Tshs. 3,460,000/= as costs for medication which was to be paid together with what will be assessed by doctors after the assessment of occupational diseases (back and neck).

On this therefore, he insisted, the cause of action did not arise because the Respondent agreed to pay claims raised by the complainant. It followed also that the Respondent on 10th February, 2021 requesting to settle the decretal sum but kept quiet. This (20/8/2020) was the time when the Complainant learnt that, the Respondent was not in a move to pay as agreed before the Labour Officer and it is this time, in his view, the cause of action arose. The matter was thus within time because of the Respondent's actions to make arrangements on how she can pay the same both orally and documentary. If there was no denial, then the cause of action could not have arisen in 2018 in terms of the provision of section 5 of the Law of Limitation Act Cap.89. He concluded that, the cause of action accrued on the 10th

February, 2021 when the Respondent refused payment and not in the year 2017 and 2018 because the Respondent did not deny payments as per the documents explained at paragraph 7(x) of the complaint.

He hinted another point if labour laws has time limit on tort matters. He said, time to institute tortuous suits falling under labour matters has not been provided for. He thought the proper item for this is on the Law of Limitation Act, Cap.89 as found under Part 1 Item 24 of the Schedule which is six (6) years. He therefore prayed this preliminary objection be dismissed thus the complaint be heard on merit.

In rejoinder, Mr. Faustin Malongo insisted that, it is clear that the cause of action accrued when the Respondent allegedly refused to pay the complainant transport costs from 19th of April, 2017 to 13th December, 2018 when he Respondent last offered to pay the complainant in respect of the CMA and High Court Revision cases. This argument to him is irrelevant because the said Respondent offers were in respect of what was determined in the CMA cases and High Court applications for revision which are not connected to the cause of actions. He cited the case of **M/S. P&O International Ltd V. The Trustees of Tanzania National Parks (TANAPA), Civil Appeal No.265 of 2020** which observed that, pre court

actions and negotiations have never been a ground for stopping the running of time. Furthermore, he added that, even if there was a stay of execution, which he disputed, yet the said stay ceased to have effect once the High Court finally determined the cases before it.

I have considered submissions of both parties together with respective authorities. The main area of concern is whether the complaint at hand is time barred.

In essence, the basis of the objection on time limitation in this suit rests on breach by the Respondent to discharge his obligation to pay the Applicant perdiems, medical expenses, transport costs, compensation for illness and compensation for breach of contractual statutory duties. In all, parties differ as to when did the cause of action accrued. Whereas the Respondent position is one that, the cause of action accrued from the time when the Respondent breached to pay the Applicant transport costs, per diem, and medical expenses which was on 19th of April, 2017 and 13th of December, 2018, the Applicant's view rests the cause of action to 10th of February, 2021 when the Respondent promised to pay the Applicant basing on the CMA cases.

Before I come to this, let me resolve one aspect as to whether or not this objection is on a pure point of law. As observed by both counsels basing on the case of **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd (1969) E.A 696**, any preliminary objection must be on a pure point of law. In this one, where the Respondent raised time limitation on suits of tort and compensation, as submitted by Mr. Faustine Malongo, the same is on pure point of law as it goes to the jurisdiction of this court to determine labour disputes. It may not, as Mr. Kipeja suggested that, it requires matters of evidence to prove time limitation. Of course, under the circumstances of this suit, certain facts as to when cause of action accrued may not be dismissed. However, this alone may not make the said objection not on a point of law.

Now to the objection. Commencing with limitation of time in labour matters, it is trite law that, time limit to file labour dispute to this court, other than disputes related to termination of employment is sixty (60) days from the date the cause of action accrued. This was the position in **Barclays Bank Tanzania Ltd vs. Phylisia Hussein Mcheni** (supra) cited to me by Mr. Faustine Malongo such that:

We shall proceed from the premises that there are time limits for initiating labour matters. Inspired by Rule 10(1) and (2) of the Labour Institutions (Mediation and Arbitration) Rules, 2007, GN No.64 of 2007, the learned High Court Judge in Dr. Noordin Jella (supra) set the time limit as 30 days for a matter involving fairness of an employee's termination and 60 days for any other dispute. While we are not determining whether the matter falls under fairness of the dismissal as we earlier intimated, we shall, in terms of section 46 of the Act, take the maximum time limit as being prescribed by the said Act which is 60 days....(emphasis ours

This being the legal position, I should now answer the question relating to when did the cause of action accrued. In **Black's Law Dictionary, 8th Edition** at page **664**, a cause of action is defined as:

A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person;

In **Edwin E. Bryant, The Law of Pleadings Under the Codes of Civil Procedure 170 (2nded. 1899)** which is quoted in the same dictionary tries to expound on the meaning of cause of action as hereunder:

"What is a cause of action? Jurists have found it difficult to give a proper definition. It may be defined generally to be a situation or state of facts that entitles a party to maintain an action in a judicial tribunal. This state of facts may be — (a) a primary right of the plaintiff actually violated by the defendant; or (b) the threatened violation of such right, which violation the plaintiff is entitled to restrain or prevent, as in case of actions or suits for injunction; or (c) it may be that there are doubts as to some duty or right, or the right beclouded by some apparent adverse right or claim, which the plaintiff is entitled to have cleared up, that he may safely perform his duty, or enjoy his property."

In the instant suit, the claim of the Complainant is that, the Respondent company did not pay for pay per diems, medical expenses, transport costs, compensation for illness and compensation for breach of contractual statutory duties. One would therefore ask; when did the Respondent refuted or neglected to discharge this statutory duty? This state of facts constitutes

cause of action from when the Applicant was supposed to be paid but the Respondent breached the obligation. In this, I agree with Mr. Malongo that, the cause of action arose on 19th of April, 2017 and 13th of December, 2018 when the Respondent Company refused to pay the claim of the Applicant. This fact is pleaded under paragraph 7(x) of the complaint as hereunder:

That, from the 19/04/2017 up to 13/12/2018 the Respondent refused to pay to pay transport costs, per diems and medical expenses that the complainant incurred/entitled amounting to Tanzanian shillings forty three million nine hundreds thirty five thousands only [43,935,000/=]

From the above paragraph of the complaint, it is obvious that, had the Respondent discharged the said obligation, the Applicant would have not filed this claim. This is what in the **Black's Law Dictionary** on cause of action is stated as a situation or state of facts that entitles a party to maintain an action in a judicial tribunal. I therefore disagree with Mr. Charles Kiteja that, the cause of action arose on 10th of February, 2021 when there was a last offer to pay compensation in respect of CMA cases. In my view, what followed after failure to discharge the obligation relating to negotiations, court actions and processes are mere arrangement to compel the discharge

of such obligation which again is evidence of breach. In **M/S P & O International Ltd vs. the Trustees of Tanzania National Parks (TANAPA), Civil Appeal No.265 of 2020** (unreported), on this point, it was observed that:

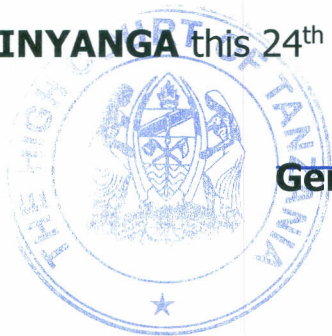
It is trite that pre-court action negotiations have never been ground for stopping the running of time. Our decisions in Consolidated Holding Corporations v. Rajani Industries Ltd and Another, Civil Appeal No.2 of 2003(unreported) cannot be more relevant in this appeal for the proposition that negotiations do not check the time from running. The court sought inspiration from a book by J.K. Runstomji on the law of Limitation, 5th edition to the effect that the statute of limitation is not defeated or its operation retarded by negotiations for settlement pending between the parties.

With this understanding, what Mr. Kiteja submitted as offers, negotiations and or reminders in fact did neither stop the prescribed period regarding cause of action from running nor revive what has already lapsed. In this therefore, a suit filed on 3rd of March, 2021 requesting redress from actions accrued in 2017 and 2018 respectively is well beyond the sixty (60)

statutory days. The remedy of a suit filed out of time is under the provisions of section 3(1) of the Law of Limitation Act, Cap.89, which is to dismiss the suit, as I hereby do. No order as to costs prescribed. It is so ordered.

Gerson J. Mdemu
JUDGE
24/9/2021

DATED at SHINYANGA this 24th day of September, 2021



Gerson J. Mdemu
JUDGE
24/9/2021